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60/3723

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Stebelton  
Serial No.: 10/071,935 Group Art Unit: 3723  
Filed: 02/07/2002 Examiner: Watson, R.  
For: NON-DISTORTION CLAMP  
Atty. Dkt. No.: 60,680-572

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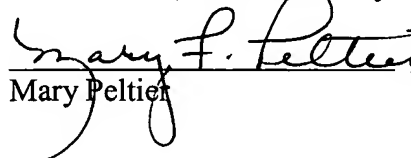
APPEAL BRIEF PURSUANT TO 37 C.F.R. § 1.192

Dear Sir:

Appellants submit, in triplicate, the following Appeal Brief pursuant to 37 C.F.R. § 1.192 for consideration by the Board of Patent Appeals and Interferences. Please charge the cost of filing the opening brief, namely \$330.00, as required under 37 C.F.R. § 1.17(c), to deposit account 04-2223. Further, please charge any additional fees required or credit any overpayment to the same deposit account.

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I hereby certify that this Appeal Brief Pursuant to 37 C.F.R. § 1.192 is being deposited with the United States Postal Service as Express Mail No. ER356748971US, postage prepaid, in an Express Mail envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on this 30<sup>th</sup> day of March 2004.

  
Mary Peltier

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# **I. REAL PARTY IN INTEREST**

Dana Corporation is the assignee of all rights in this invention and is the real party in interest.

# **II. RELATED APPEALS AND INTERFERENCES**

Neither Appellants, Appellants' representatives, nor Dana Corporation (the assignee) knows of any appeal or interference that will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

# **III. STATUS OF CLAIMS**

Claims 1-20 are pending in this application. Claims 1-16 are allowed. Claims 17 and 20 have been finally rejected. Claims 18-19 are objected to as dependent upon a rejected base claim (claim 17). The rejection of claims 17 and 20 is being appealed.

# **IV. STATUS OF AMENDMENTS**

No amendment has been filed subsequent to the final rejection.

# **V. SUMMARY OF THE INVENTION**

This invention relates to a clamp (10--Figs. 1-2) for gripping a part (12—Figs. 1-2) and, in particular, to a clamp (10--Figs. 1-2) having an improved structure for allowing the components of the clamp (10—Figs. 1-2) to be locked into place following engagement of the part (12—Figs. 1-2).<sup>1</sup> The clamp (10--Figs. 1-2) includes a body (14—Figs. 1-2) defining an opening (40—Figs. 1-2) closed at one end by a plate (16—

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<sup>1</sup> See specification at page 1, lines 6-8 and page 2, lines ].

Figs. 1-2).<sup>2</sup> The clamp further includes a first arm (20—Figs. 1-2) partially disposed within the opening (40—Figs. 1-2) and extending outwardly therefrom.<sup>3</sup> The first arm (20—Figs. 1-2) is configured to engage a first side of the part (12—Figs. 1-2).<sup>4</sup> The clamp further includes a second arm (18—Figs. 1-2) partially disposed about the body (14—Figs. 1-2) and spaced from the first arm (20—Figs. 1-2).<sup>5</sup> The second arm (18—Figs. 1-2) is configured to engage a second side of the part (12—Figs. 1-2).<sup>6</sup> Finally, the clamp includes means, such as an assembly (26—Figs. 1-2), for securing the first and second arms (20, 18—Figs. 1-2) relative to the body (14—Figs. 1-2).<sup>7</sup>

In one embodiment of the invention, the securing means or assembly (26—Figs. 1-2) includes several members (112, 114, 116—Figs. 1-2) which comprise a fastener (112—Figs. 1-2), a nut (114—Figs. 1-2) and a pushrod (116—Figs. 1-2).<sup>8</sup> The fastener (112—Figs. 1-2) extends along a first axis (120—Figs. 1-2) through at least portions of the first and second arms (20, 18—Figs. 1-2).<sup>9</sup> The nut (114—Figs. 1-2) is disposed within a bore (88—Figs. 1-2) in the first arm (20—Figs. 1-2) and is configured to receive the fastener (112).<sup>10</sup> The pushrod (116—Figs. 1-2) is disposed within another bore (98—

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<sup>2</sup> See specification at page 3, lines 23-24 and page 3, line 31 to page 4, line 3.

<sup>3</sup> See specification at page 4, lines 24-28.

<sup>4</sup> See specification at page 4, lines 24-25.

<sup>5</sup> See specification at page 4, lines 6-9.

<sup>6</sup> See specification at page 4, lines 8-9.

<sup>7</sup> See specification at page 3, lines 5-6 and page 6, lines 3-6.

<sup>8</sup> See specification at page 6, line 5 to page 7, line 12.

<sup>9</sup> See specification at page 6, lines 12-15.

<sup>10</sup> See specification at page 6, lines 30-32.

Figs. 1-2) in the first arm (20—Figs. 1-2) and is disposed about a second axis (28—Figs. 1-2) extending perpendicular to the first axis (120—Figs. 1-2).<sup>11</sup> Rotation of the fastener (112—Figs. 1-2) in a first rotational direction causes movement of the nut (114—Figs. 1-2) along the first axis (120—Figs. 1-2) in a first axial direction and corresponding movement of the pushrod (116—Figs. 1-2) along the second axis (28—Figs. 1-2).<sup>12</sup> As a result, the pushrod (116—Figs. 1-2) engages the plate (16—Figs. 1-2) in the body (14—Figs. 1-2) to secure the first and second arms (20, 18—Figs. 1-2) relative to the body (14—Figs. 1-2).<sup>13</sup>

## **VI. ISSUES**

1. Whether any of claims 17 and 20 are patentable under 35 U.S.C. § 102(b) over U.S. Patent No. 4,729,552 (“Pempek”).

## **VII. GROUPING OF CLAIMS**

Appellants submit that claims 17 and 20 stand or fall together with respect to the contested rejection.

## **VIII. ARGUMENTS**

Claims 17 and 20 stand rejected under 35 U.S.C. § 102(b) as anticipated by Pempek (U.S. Patent No. 4,729,552). Applicant respectfully submits that the rejection of claims 17 and 20 under 35 U.S.C. § 102(b) is improper because Pempek does not disclose

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<sup>11</sup> See specification at page 7, lines 4-7.

<sup>12</sup> See specification at page 7, lines 21-32.

<sup>13</sup> Id.

or suggest all of the limitations recited in the claims. In re Paulsen, 30 F.3d 1475, 1478-79, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1997) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”).

Independent claim 17 recite a clamp including a body and first and second arms and “means for securing said first and second arms relative to said body.” This latter limitation is written in a means plus function format and, therefore, must be interpreted in accordance with 35 U.S.C. § 112, ¶ 6 to cover the structure disclosed in the specification for performing the recited function and equivalent structures. As set forth in the specification, the “means for securing...” comprises an assembly 26 including members 112, 114, 116 which comprise a fastener, nut and pushrod in the illustrated embodiment. See specification page 3, lines 5-6 and page 6, line 3 to page 7, line 12. Rotation of the fastener in a first rotational direction causes movement of the nut along a first axis in a first axial direction and corresponding movement of the push rod along a second axis whereby the push rod engages a plate in the body to secure a position of the first and second arms relative to the body.

In the final Office Action, the Examiner apparently identifies elements 12, 8 and 24 in Pempek as meeting the “means for securing...” limitation in claim 17. Office Action mailed December 8, 2003 page 2, lines 12-14 (“First arm 23 and second arm 15 are secured relative to body 13 via elements 12, 8, 24, shown in Figure 2”).<sup>14</sup> Elements

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<sup>14</sup> Applicant notes that the cited sentence was not present in the initial Office Action which did not address the claim limitation at all. Office Action mailed August 21, 2003 page 2. In reply to the August 21, 2003 Office Action, the Applicant stated as follows:

12, 8 and 24 in Pempek comprise a “post,” a “disk,” and a pivot connection, respectively. Pempek Figures 1-2 and col. 1, lines 19-20, 27-28 and 52-55. These structures are clearly not identical to the fastener, nut and pushrod structures disclosed in the application. Further, the Examiner has not provided any rationale whatsoever as to how these structures could be considered equivalent structures to the fastener, nut and pushrod structures disclosed in the specification.

The Examiner asserts that Applicant is taking a position that the arms 23 and 15 identified by the Examiner in Pempek are not secured relative to the body 13. Office Action mailed December 8, 2000 page 2, lines 20-23. This assertion is incorrect. Applicants are not arguing the functional limitation recited in the means-plus function limitation, but rather the scope of the structure for performing the function that is encompassed by the limitation. Applicant submits that the structure identified in Pempek by the Examiner is clearly not identical to the structures disclosed in the application for performing the recited function. Further, Applicant submits that the Examiner has not provided any rationale explaining why the structures identified in Pempek by the Examiner would be considered equivalent to the structures disclosed in the application

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The Office Action does not address this limitation in claim 17 and does not identify what structure the Examiner believes performs the function of “securing said first and second arms relative to said body”. Nevertheless, it is clear that Pempek does not disclose identical structure and Applicant respectfully submit that Pempek does not disclose any equivalent structure. If the Examiner disagrees, Applicant respectfully requests that the Examiner identify the structure and set forth the reasoning for determining that such structure is equivalent to the disclose structure discussed above.

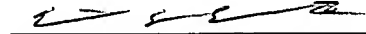
Reply to Office Action filed November 21, 2003 page 8, line 27 to page 9, line 2. In the Final Office Action, the Examiner appears to have identified the structure for the first time, but still provides no rationale as to why the Examiner believes the structure is equivalent to the structure disclosed in the application.



for performing the recited function. Accordingly, the Examiner has failed to demonstrate that Pempek discloses a device meeting the “means for securing...” limitation, as properly interpreted under 35 U.S.C. § 112 ¶ 6, recited in claim 17.

Because Pempek does not teach or suggest all of the limitations recited in independent claim 17, Applicant submits that the rejection of claim 17 under 35 U.S.C. § 102(b) is improper and requests that the rejection be overturned. Further, because claim 20 depends from claim 17, Applicant submits that the rejection of claim 20 under 35 U.S.C. § 102(b) is also improper and requests that the rejection be overturned.

Respectfully submitted,



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## IX. APPENDIX

17. A clamp for gripping a part, comprising:  
a body defining an opening closed at one end by a plate;  
a first arm partially disposed within said opening and  
extending outwardly therefrom, said first arm configured to  
engage a first side of said part;  
a second arm partially disposed about said body and spaced  
from said first arm, said second arm configured to engage a  
second side of said part; and,  
means for securing said first and second arms relative to  
said body.

20. The clamp of claim 17 wherein at least one of said  
first and second arms includes a wear pad mounted thereon and  
configured to engage said part.

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Applicant(s): Stebelton

Docket No.

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Serial No.

10/071,935

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02/07/02

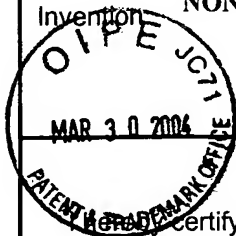
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Watson, R.

Group Art Unit

3723

Inventor: NON-DISTORTION CLAMP



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